

STATE OF MICHIGAN
COURT OF APPEALS

TAMMY LACROSS, MARQUETTA TARVER,
YOLANDA LIMMITT, DYANNA MCDADE,
and LATOYA O'NEAL, on behalf of themselves
and all others similarly situated,

Plaintiffs-Appellees,

v

NANCY ZANG, SUSAN DAVIS, MIKAL
AKHTAB, CLARICE STOVALL, RICHARD
IDEMUDIA, HUGH COX, ERWIN D,
RICHARDSON, WILLIAM BRANUM, ANDRES
CHAPPELL, KENNETH DOBBINS, DARRYL
TURNER, TERRY TRAMBLE, THOMAS
DESANTIS, and KENT CHASE,

Defendants-Appellants.

UNPUBLISHED
May 2, 2006

No. 267142
Washtenaw Circuit Court
LC No. 05-000944-CZ

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendants claim an appeal from that portion of the trial court's order denying their motion for summary disposition based on governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs are current and former inmates of the Michigan Department of Corrections (DOC). Plaintiffs filed suit alleging that defendants Akhtab, Idemudia, Cox, Richardson, Branum, Chappell, Dobbins, Turner, Tramble, and Chase, who are correctional officers,¹ and defendants Yukin, Zang, Davis, Stovall, and DeSantis, who are current and former supervisors and wardens, committed acts that constituted assault and battery, invasion of privacy, gross negligence, and intentional infliction of emotional distress.

¹ The complaint named 41 correctional officers as defendants. The 11 correctional officers and five supervisory employees named as defendants in this appeal moved for summary disposition in the trial court.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(4), (6), (7), (8), and (10), alleging lack of subject matter jurisdiction,² that other actions had been initiated between the same parties and involving the same claims,³ that defendants were entitled to governmental immunity, that plaintiffs failed to state a claim on which relief could be granted, and that plaintiffs failed to establish the existence of a genuine issue of material fact. Defendants asserted that as public employees they were entitled to governmental immunity pursuant to MCL 691.1407(2). Defendants also asserted that the complaint did not allege that they actually perpetrated a sexual assault on any plaintiff; therefore, their actions could not constitute the proximate cause of any injuries sustained by plaintiffs.

The trial court denied defendants' motion for summary disposition in its entirety. Regarding defendants' assertion that they were entitled to governmental immunity, the trial court noted that governmental employees were not entitled to immunity for intentional torts. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). In addition, the trial court found that the allegations in the complaint, taken in a light most favorable to plaintiffs, could support a finding that defendants acted in a grossly negligent manner.⁴

We review a trial court's decision on a motion for summary disposition de novo. When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pled allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996). The applicability of governmental immunity is a question of law that we also review de novo. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2). Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the

² Defendants alleged that plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act, 42 USC 1997 *et seq.*, and the Michigan Prison Litigation Reform Act, MCL 600.5501 *et seq.*

³ *Neal, et al v Dep't of Corrections*, Washtenaw Circuit Court Docket No. 96-006986-CZ, and *Anderson, et al v Dep't of Corrections*, Court of Claims Docket No. 03-000162-MZ, are class actions filed on behalf of female inmates that make similar allegations against correctional officers and DOC supervisory personnel.

⁴ Defendants sought leave to appeal from those portions of the trial court's order denying their motion for summary disposition on grounds other than governmental immunity (Docket No. 267132). This Court, in a 2-1 decision, denied the application for failure to persuade of the need for immediate appellate review.

injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

Defendants do not challenge the trial court's conclusion that they are not entitled to immunity for intentional torts. Furthermore, defendants' assertion that plaintiffs did not allege that they perpetrated sexual assaults and other improprieties is simply inaccurate. Defendants have failed to address the merits of their assertion of error; that is, defendants have failed to present proper argument to support their position that plaintiffs' allegations could not support recovery under a theory of gross negligence. The failure to properly address the merits of an assertion of error constitutes abandonment of the issue. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot